

Gerard T. York and Jim Miller

An Overview of Anti-looting Efforts in Florida

People have lived in Florida for more than 12,000 years. From the earliest Paleo-Indian hunters at the end of the last ice age to the powerful chiefdoms encountered by Spanish explorers, Florida's native people have left their mark. The landscape is rich with remains of pre-European earthworks, mounds, canals, plazas, and villages. Almost six centuries of European exploration, colonization and settlement have left archeological sites ranging from 16th-century St. Augustine to Spanish missions, Spanish shipwrecks, British plantations, and wooden forts. Every few years brings yet another archeological surprise. New discoveries spark great public interest in Florida archeology, interest that further reinforces our responsibility as owners and managers to protect this fragile legacy. The Florida Department of State through its Bureau of Archeological Research (BAR) is taking a two-pronged approach towards fulfilling its responsibility, with training for law enforcement personnel and land managers about protecting archeological resources, and assistance for prosecutors in attacking the problem of archeological looting.

Officer Gary Wills, Florida Park Patrol, interviews a suspect in connection with commercial shell collecting from Josselyn Island, a National Register-listed Caloosahatchee shell complex on State-owned lands. Photo courtesy of Florida Department of Environmental Protection, Charlotte Harbor Aquatic and State Buffer Preserves.



In March 2000, Florida Secretary of State Katherine Harris established the Archeological Law Enforcement Task Force to focus attention on looting. Members of the Office of the Statewide Prosecutor, Florida Department of Law Enforcement, BAR, Florida Department of Environmental Protection (DEP), the Governor's Council on Indian Affairs, and other groups conducted an assessment of looting, vandalism, and the destruction of archeological sites on public lands. The task force recommended ways to help alleviate these problems. Looting of archeological sites in Florida has reached epidemic proportions, in part because of the high prices that antiquities bring at market. Prices on the Internet reveal that Clovis points may sell for thousands of dollars and other stone points are frequently valued in the hundreds of dollars.

During the past decade, land management officials have made at least 50 arrests at the Aucilla Wildlife Management Area 25 miles southeast of Tallahassee. The area provides a continuing opportunity for State and Federal cooperation given its proximity to St. Marks National Wildlife Refuge. The self-styled Coon Bottom Artifact Militia is a loosely organized clandestine group of artifact collectors operating in the Aucilla area as well as other parts of the State. Many prosecutions of looters in the Aucilla area have occurred recently, netting some members of this group, but overall enforcement efforts have met with mixed success.

On March 31, 1997, Arthur and Daniel Cochran were arrested by Officer Robert Daniels of the Florida Game and Freshwater Fish Commission on charges of unlawful excavation of a State-owned archeological site. The Cochrans had uncovered stone tool fragments and pottery shards from the Weeden Island culture dating back 1,000 to 1,500 years. In addition to the usual penalties for such violations, Judge F. E. Steinmayer ordered the Cochrans to pay \$28, 771.67. The penalty was based upon

testimony from a BAR archeologist using the Federal archeological value standard. The Cochran did not dispute a restitution amount of \$1,089.30 for an emergency archeological survey to assess the impact of their digging.

While the Tallahassee Democrat called the *Cochran* case “a turning point in Florida’s effort to halt the plunder of its Native American heritage,” the case did not fare well on appeal.¹ The First District Court of Appeal in Tallahassee reversed the restitution award that Assistant State Attorney Michael Schneider had sought for lost “archeological value.” Applying existing Federal standards for archeological value, the State’s theory of recovery was that the restitution was “what it would have cost the State to have done a proper archeological investigation at the locations” that the defendants looted, or “what it would cost to try to recoup the historical knowledge lost as a result of the digging.”² The following year, in an appeal where a defendant named Shearer was sentenced to jail time, the same Tallahassee appeals court reversed without comment another archeological value restitution award of \$33, 801.³⁴ based upon its decision in the *Cochran* case.³

While the appeals court in *Cochran* did not state a basis for reversing the restitution award, one ground argued on appeal by the Cochran was that the amount did not represent restitution under existing Florida law, requiring a court to find “that the loss or damage is causally connected to the offense and bears a significant relationship to the offense.”⁴ However, in response to task force recommendations and the *Cochran* and *Shearer* decisions, the Florida Legislature in 2001 amended the Florida statutes to explicitly enact into Florida law the Federal archeological value standard, thus guiding trial courts on standards for the commercial value of archeological resources, the cost of restoration and repair of damaged archeological sites, as well as archeological value. Florida is the first State in the Nation to enact into law the Federal archeological value restitution standard. It is hoped that this enhanced prosecutorial tool will provide a framework for Florida judges to fashion restitution awards that both fully reflect the gravity of the damage done by archeological looting and withstand appellate review.

The task force pointed out that, notwithstanding the ability of prosecutors to prove criminal cases beyond a reasonable doubt, BAR already

possessed the authority under existing law to fine persons and organizations for damages and injuries to all cultural resources on State-managed lands and to enjoin such persons or organizations from similar activity. Section 267.13(2), Florida Statutes, permits the Division of Historical Resources (DHR) to institute an administrative proceeding to impose a fine of not more than \$500 a day and seek injunctive relief against any person or business organization that, without written permission of the division, explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archeological value located on State-owned or State-controlled lands, including State sovereignty submerged lands.

The task force recommended that assessments and applications occur in conjunction with each prosecution for archeological looting and suggested that expansion of the civil penalty provisions beyond the current \$500 per day may be useful in cases where criminal prosecution is determined to be inappropriate or declined, or a pretrial diversion agreement is reached. Appropriate cases for civil penalty assessments may include contractors or companies that work on State land, cases of unintentional damage to archeological sites, or cases where the need for restoration and repair is greater than the desire to punish the offender. Mitigation factors in assessing such penalties may include agreement to return archeological resources to DHR; contribution to the protection or study of archeological resources; provision of information to detect, prevent, or prosecute other instances of archeological looting; hardship or inability to pay; evidence that the violation was not willful; or a finding that the penalty is excessive.

Likewise, the task force pointed out that existing provisions of Florida law include various forfeiture provisions, including forfeiture of all specimens, objects, and materials collected, together with all photographs and records relating to the removed material; and forfeiture of any vehicle or equipment used in connection with the violation.⁵ The task force noted that such provisions, particularly seizure of the looter’s vehicle, could serve to send a strong message to looters. Also, the task force favorably noted sentencing options developed by prosecutors in other States, such as requiring offenders to appear in public commercials or pay for advertisements renouncing their illegal behavior and the consequences of

their personal transgressions, as well as advising those who might do so otherwise to refrain from similar illegal acts.

The task force recommended another vital change to Florida law. DHR is required by law to maintain a central inventory of historic properties. The “master site file” is an important tool for protecting Florida’s cultural resources, both terrestrial and submerged, as well as a useful tool for researchers. However, Florida’s liberal public records laws until recently allowed information contained in the master site file to be accessed and used by persons wishing to locate archeological sites to vandalize and loot for personal gain. Many of the archeological sites recorded in the master site file are fragile and remain vulnerable. The disturbance of any site could irretrievably destroy a part of Florida’s history. Until 2001, Florida was one of a minority of States that had no protective clauses regarding archeological and cultural site locations. One convicted looter, in fact, tellingly jested to the Tallahassee Democrat that he would like to volunteer to serve his community service time “at the state archives in the map room” — a place known to be “full of maps showing the locations of archeological sites.”⁶

The lack of protection from disclosure for Florida sites put the Federal government in a difficult position. The Federal government is mandated to share site-specific information with the Florida State Historic Preservation Officer to comply with Section 106 of the National Historic Preservation Act (NHPA). Yet to do so would jeopardize the release of that information to the general public under Florida’s public records law. Such disclosures would conflict with section 304 of NHPA which protects specific information on the location and character of cultural resources when sharing that information could place them in jeopardy.

Two other urgent developments on this subject were noted by the task force. First is the development of geographic information system (GIS) databases listing sites located in the Florida master site file. GIS databases are valuable tools for recording site location and survey data for researchers, land use planning, and site stewardship by land managers and law enforcement officers. However, these data could be quickly disseminated to the general public via the Internet if protective measures were not placed on how the data are shared and used. Also, the new implementation guidelines for NHPA required

increased consultation with federally recognized tribes. The task force noted that managing information about Native American sacred sites and sites of cultural patrimony comes with a responsibility of confidentiality. Credible stewardship includes protecting sensitive information from public dissemination. Based on the task force recommendations, DHR proposed a legislative exception to the Florida Constitution that was passed into law during the 2001 session of the Florida Legislature —

Any information identifying the location of archeological sites contained in site files or other records maintained by the Division of Historical Resources of the Department of State is exempt from the provisions of s. 119.07(1) and s. 24(a) of Art. I of the State Constitution, if the Division of Historical Resources finds that disclosure of such information will create a substantial risk of harm, theft or destruction at such sites.

The Florida master site file database also is being modified to better permit collecting and evaluating the nature and extent of the looting problem affecting Florida’s archeological sites. The addition of data entry fields in the State’s archeological database and on the corresponding paper site form will improve the State’s documentation of looting and other types of site disturbances.

In addition to spearheading the Archeological Law Enforcement Task Force, BAR has backed efforts to educate law enforcement agencies and personnel about protecting archeological resources. BAR’s standard Archeological Resource Management (ARM) training was originally designed to educate State land managers, especially in the Florida park system, who are responsible for the day-to-day management of State-owned archeological resources. The ARM program includes law enforcement topics and law enforcement trainees. The program was developed in conjunction with DEP’s Division of Recreation and Parks, and was initially offered primarily to park staff and management.

The ARM program soon was opened up to other public land managers, Federal as well as State, and to nonprofit land conservation organizations. As training was made available to other agencies in addition to the Florida Park Service, the number of law enforcement officers participating in the 3-day ARM class has increased. So far, more than 350 State, Federal, local government, and nonprofit employees have completed

the 3-day training course. An additional 200 law enforcement officers have received other specialized training.

In 1993, the Florida Senate Committee on Governmental Operations recommended that the Florida Department of Law Enforcement in conjunction with DHR, Department of Natural Resources (now DEP), and the Game and Fresh Water Fish Commission (now FWCC) develop training for law enforcement personnel in protecting archeological sites on public lands. This training was developed as a 1- to 2-hour module, and is now part of the basic law enforcement curriculum for every law enforcement officer in the State trained since 1993. This training acquaints all agencies and law enforcement officers with the basic statutory foundation that disturbance of archeological resources on publicly owned or controlled land without a permit is illegal.⁷ The training further directs how officers should respond if such a violation is suspected. Hundreds of recruits of sheriff's offices, city police departments, and State law enforcement agencies have received this basic training in the past 8 years.

The task force made a number of proposals to supplement BAR's continuing efforts to educate law enforcement agencies and personnel about protecting archeological resources. The task force recommended that BAR should work with the Florida Bar Association (FBA) to develop a seminar for Florida's State prosecutors similar to Federal training programs attended by Florida attorneys (see McAllister's article, p.15). BAR, in cooperation with the Florida Association of Prosecuting Attorneys, hopes to finalize arrangements for a Florida Time Crime seminar for interested attorneys in the coming year.

Outdoor enthusiasts such as hunters, fishermen, boaters, and scuba divers are responsible for much of the illegal digging in Florida. Many outdoor enthusiasts, largely as a result of the natural conservation ethic that is now widely advocated by national and State sport associations and organizations, have adopted "leave only footsteps" ethics of impacting the natural environment and enjoying outdoor pastimes. To educate outdoor enthusiasts about cultural resources, the task force recommended that BAR develop course materials on site preservation law and cultural preservation ethics for first-time hunters, boaters, scuba divers, and other outdoors people for

whom training or State certification is required. Also, BAR distributes a number of publications to promote archeological conservation. "Best Management Practices, An Owner's Guide to Protecting Archeological Sites" is useful for anyone who has an interest in protecting sites, and contains a section entitled "Looting and Vandalism" with recommended procedures and contact information. A companion publication, "Archeological Stabilization Guide: Case Studies in Protecting Archeological Sites," illustrates the damage caused by looting and the role of law enforcement and site managers in responding to threats and repairing damage.

State Archeologist James Miller notes that the task force organized all of the principal people and agencies necessary to respond effectively to possible illegal activities —

Prior to the work of the Task Force, it was virtually impossible to arrange a quick and effective response because none of the necessary participants had any idea about archeological resources and the means for their protection. Now an effective response can be implemented from initial report to law-enforcement action in less than 24 hours.

Miller hopes that procedures developed to respond to suspected violations will improve the effectiveness of cooperative efforts among land managers, archeologists, law enforcement officers, and prosecutors.

Damage to our heritage by groups like the Coon Bottom Artifact Militia should never be forgotten. An accomplished Florida looter has claimed that "[t]his is my hobby and always has been. I've recovered a lot of things that would still be in the ground if I hadn't dug them up. . . I always thought I was doing a service to mankind."⁸

The Florida Legislature disagreed with such sentiments and recently clarified Florida's public policy regarding the State's archeological heritage —

It is hereby declared to be the public policy of the State of Florida to preserve archeological sites and objects of antiquity for the public benefit and to limit exploration, excavation and collection of such matters to qualified persons and educational institutions possessing the requisite skills and purpose to add to the general store of knowledge concerning history, archeology and anthropology.⁹

With any luck, the days are numbered for the Coon Bottom Artifact Militia and others who illegally collect and traffick in artifacts.

Notes

- ¹ Bill Kaczor, "State Getting Touch on Looting at Florida's Archeological Sites," *Tallahassee Democrat* (December 22, 1997): 8B.
- ² Attorney General's Brief at 3-4. On the existing standard for archeological value, see *Cochran v. State*, 724 So.2d 129 (Fla. 1st DCA 1999). As defined in regulations promulgated by the Secretary of the Interior, "archeological value" is the "value of the information associated with the archeological resource" [43 C.F.R. § 7.14(a)(1997)]. This intangible value "shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation."
- ³ *Shearer v. State*, 754 So.2d 192 (Fla. 1st DCA 2000).
- ⁴ *Glaubius v. State*, 688 So.2d 913, 915 (Fla. 1997).
- ⁵ Section 267.13(1)(a)-(c), Florida Statutes.

- ⁶ Kathleen Laufenberg, "The Great Artifact War," *Tallahassee Democrat* (March 10, 1996): 1A.
- ⁷ §267.13, Florida Statutes.
- ⁸ Laufenberg.
- ⁹ §267.14, Florida Statutes.

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Jim Miller is State Archaeologist and chief of the Bureau of Archaeological Research. Under his direction, the bureau has supported resource management, research, and public interpretation activities. He has helped write and revise many of the Florida rules and statutes relating to archeological resources. In 1997, he received the Award for Excellence in Cultural Resource Management from the Society for American Archaeology.

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"Rescuing" Artifacts A Case Study in Disinformation

The summer of 2000 was exceptionally dry in Georgia, even by the standards of several years of preceding drought. As a result, rivers and tributaries were low in their banks and, in some cases, completely dry. "Protected" archeological sites became exposed, and reports of looting, already on the rise for terrestrial sites, exploded. The southwestern part of the State was especially affected as the Chatahoochee and Flint Rivers were targeted by looters.

In response to the increase in looting, the Georgia Department of Natural Resources (DNR) Law Enforcement Section approached DNR's Historic Preservation Division for assistance in drafting additional protections for consideration by the Georgia General Assembly. A joint committee involving DNR law enforcement

officers, the Office of the State Archaeologist, an avocationalist with interests in riverine sites, and the departmental attorney met several times in late 2000 to draft legislation. A legislator who has preservation interests and is a diver agreed to sponsor the proposed changes. This article recounts what followed, in hopes that other States can learn from Georgia's experiences.

Legal Background

Georgia is home to several major Federal agencies, including the U.S. Forest Service and the U.S. Department of Defense. Sites on these properties are protected by the Archaeological Resources Protection Act (ARPA) and other Federal laws. In addition, the State manages a variety of public lands. Georgia has an award-winning State park system, and large wildlife management areas. However, only about 8 per-